

Filed 3/28/19 Girard v. Bahney CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JEFFREY TATE GIRARD,

Petitioner and Appellant,

v.

LEROY BAHNEY,

Respondent.

B286491

Los Angeles County

Super. Ct. No.

17STRO03078

APPEAL from an order of the Superior Court of Los Angeles County, Laura Hymowitz, Commissioner. Affirmed.

Jeffrey Tate Girard, Petitioner and Appellant, in pro per.

Leroy Bahney, Respondent, in pro per.

## **INTRODUCTION**

Appellant Jeffrey Girard appeals the trial court's denial of his request for a civil harassment restraining order against respondent Leroy Bahney. Because a single act of harassment cannot justify issuance of a restraining order, and because substantial evidence supports the trial court's finding that the alleged harassment was a "one-time deal," we affirm. The court's failure to consider additional evidence that Girard offered was not prejudicial error.

## **FACTS AND PROCEDURAL BACKGROUND**

On August 31, 2017, Girard entered the residential hotel where he lived and saw Bahney, a neighbor whom Girard did not know, hurriedly coming down the stairs toward him, seemingly angry. Bahney appeared to be yelling at Girard, although Girard could not hear what Bahney was saying. Bahney struck Girard on the head with Bahney's cane. Girard suffered a head injury which required six stitches. Girard's hand, which he used to try to protect his head from the blow, was also injured. Bahney was arrested but later released.

Girard thereafter filed a request for a civil harassment restraining order against Bahney pursuant to Code of Civil Procedure section 527.6. Based on Girard's declaration, the trial court granted a temporary restraining order. During the subsequent contested hearing, however, Bahney testified he struck Girard with his cane because Girard threw a plastic water bottle at him, that he has nothing else against Girard, and he has no desire to hurt Girard further. Based on this testimony, the court found the incident was "a one-time deal" and denied a

further restraining order. Although Girard tried to introduce testimony from a witness to the incident, a video of the incident, and a letter from his therapist about his reaction to the incident, the court stated this evidence was unnecessary and did not consider it.

## **DISCUSSION**

Code of Civil Procedure § 527.6, subdivision (a)(1)<sup>1</sup>, provides “[a] person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section.” Subdivision (b)(3) of the statute defines “harassment” as “unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.” Subdivision (b)(7) defines “unlawful violence” as “any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code,” not including lawful acts of self-defense or defense of others.

Section 527.6, subdivision (d), provides a temporary restraining order may issue, with or without notice, if petitioner's declaration demonstrates reasonable proof of harassment of the petitioner by the respondent, and great or irreparable harm may result to the petitioner if the restraining order is not issued.

The court must hold a hearing on the petition within 21 days, or if good cause appears, within 25 days, from the date the petition for a temporary restraining order is granted or denied. (§ 527.6, subd. (g).) At the hearing, the court “shall receive any testimony that is relevant, and may make an independent

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<sup>1</sup> All statutory citations are to the Code of Civil Procedure.

inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.” (*Id.*, subd. (i).) However, “a single act of harassment alone cannot justify a restraining order.” (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 499.) An injunction restraining future conduct is only authorized when it appears harassment is likely to recur in the future. (*Russell v. Douvan* (2003) 112 Cal.App.4th 399, 402.)

We review the trial court's decision to grant or deny a restraining order under section 527.6 for substantial evidence. (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) “The appropriate test on appeal is whether the findings (express and implied) that support the trial court's . . . order are justified by substantial evidence in the record.” (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188, fn. omitted.)

Substantial evidence supports the trial court’s ruling that Bahney committed only a single act of harassment, and a restraining order therefore could not issue. The court was entitled to credit Bahney’s testimony that he had no desire to hurt Girard further, and to therefore conclude a restraining order was unwarranted. The trial court did not abuse its discretion in refusing to consider additional evidence that was cumulative or irrelevant.

### **DISPOSITION**

The order denying the restraining order is affirmed.  
Respondent shall recover his costs on appeal.

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CURREY, J.

WE CONCUR:

MANELLA, P. J.

COLLINS, J.